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DATE 10/25/05

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

RICKY JOSEPH ALEX

VERSUS

RICHARD L. STALDER

CIVIL ACTION NO. 5:03CV0030
JUDGE WALTER
MAG. JUDGE HORNSBY

ORDER

The court issued an order on 10/13/05 document [39-1] denying IFP because the applicant is barred from proceedings *in forma pauperis* on the appeal because of the "three strikes" rule of 28 U.S.C. §1915 (g). The applicant has not received "three strikes," therefore, that order is hereby vacated.

Accordingly, upon consideration of the application to proceed *in forma pauperis*, the Court DENYS the application and ORDERS that the petitioner shall NOT BE allowed to proceed *in forma pauperis* in the appeal of this action because the court certifies that the appeal is not taken in good faith pursuant to 28 U.S.C. §1915 (a)(3) and Fed. R. App.P.24 (a)(3).

Although this court has certified that the appeal is not taken in good faith under 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3), the applicant may challenge this finding pursuant to Baugh v. Taylor, 117 F. 3d 197 (5th Cir. 1997), by filing a separate motion to proceed IFP on appeal with the Clerk of Court, U.S. Court of Appeals for the Fifth Circuit, within 30 days of this order. The cost to file a motion to proceed on appeal with the Fifth Circuit is calculated below, and if the appellant moves to proceed on appeal IFP, the prison authorities will be directed to collect the fees as calculated in this order.

RICKY JOSEPH ALEX is assessed an initial partial fee of \$(-0-). The agency having custody of the prisoner shall collect this amount from the trust fund account or institutional equivalent, when funds are available, and forward it to the clerk of the district court.

Thereafter, the prisoner shall pay \$255.00, the balance of the filing fees, in periodic installments. The appellant is required to make payments of 20% of the preceding month's income credited to the appellant's prison account until appellant has paid the total filing fee of \$255.00. The agency having custody of the prisoner shall collect this amount from the trust fund account or institutional equivalent, when funds are available and when permitted by 28 U.S.C. § 1915(b)(2), and forward it to the clerk of the district court.

If the appellant moves to proceed on appeal IFP, the clerk shall mail a copy of this order to the inmate accounting office or other person(s) or entity with responsibility for collecting and remitting to the district court interim filing payments on behalf of prisoners, as designated by the facility in which the prisoner is currently or subsequently confined.

SO ORDERED this 24 day of Oct, 2005.


DONALD E. WALTER
UNITED STATES DISTRICT JUDGE